

**UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

MADISON CAWTHORN, an individual,

Plaintiff,

v.

MR. DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, **MS. STELLA ANDERSON**, in her official capacity as a member of the North Carolina State Board of Elections, **MR. JEFF CARMON**, in his official capacity as a member of the North Carolina State Board of Elections, **MR. STACY EGGERS IV**, in his official capacity as a member of the North Carolina State Board of Elections, **MR. TOMMY TUCKER**, in his official capacity as a member of the North Carolina State Board of Elections, **MS. KAREN BRINSON BELL**, in her official capacity as the Executive Director of the North Carolina State Board of Elections.

Defendants.

Civ. No. 5:22-cv-50-M

Plaintiff's Motion to Expedite

Pursuant to Federal Rules of Civil Procedure 7(b) and 57 Plaintiff Madison Cawthorn (“**Rep. Cawthorn**”) moves for this Court to order an expedited schedule and an expedited hearing on the merits of the Verified Complaint (ECF No. 1).

This case concerns the constitutionality of the North Carolina’s statute, which allows any qualified voter registered in the same district (“**Challenger**”) as the office for which a candidate for “any elective office in the State” (“**Candidate**”) to file a challenge that the Candidate does

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not meet the constitutional or statutory qualifications for the office, including residency.

(“**Challenge**”). N.C.G.S. § 163-127.1, et seq. (“**Challenge Statute**”).

In Rep. Cawthorn’s good faith effort to expedite this case, Plaintiff’s Counsel sent, via USPS and email, all pleadings to Defendants immediately after filing. Accordingly, all parties were notified of the case immediately after filing.

Request for Expedited Schedule

Rep. Cawthorn will be irreparably harmed unless this matter is expedited. The Challenge Statute violates Rep. Cawthorn’s constitutional rights.

Rep. Cawthorn currently serves as a Member of the U.S. House of Representative, for North Carolina’s 11th congressional district. Rep. Cawthorn filed his candidacy, for the upcoming midterm elections, for North Carolina’s 13th congressional district on December 7, 2021. *See* NCSBE Candidate List Excerpt, Ex. A to Mem. in Supp. of Prelim. Inj.

On January 10, 2022, several Challengers filed a Challenge against Rep. Cawthorn. Cawthorn Challenge, Ex. B to Mem. in Supp. of Prelim. Inj. The Cawthorn Challenge stated that Rep. Cawthorn “does not meet the federal constitutional requirements for a Member of the U.S. House of Representatives and is therefore ineligible to be a candidate for such office.” *Id.* at ¶ 1. The Cawthorn Challenge was based upon claims that Rep. Cawthorn engaged in insurrection or rebellion against the United States and was ineligible to run for Congress under the Fourteenth Amendment to the U.S. Constitution. *See* U.S. Const. amend. XIV, § 3. Rep. Cawthorn vigorously denies he engaged in “insurrection or rebellion” against the United States, but this litigation is not based in Rep. Cawthorn’s factual defenses. Instead, this matter is before the court

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based upon various constitutional challenges to the North Carolina Challenge Statute itself.

On January 11, 2022, the NCSBE issued a stay on all Challenges filed with the NCSBE until a “final resolution” is reached on the ongoing litigation related to the drawing of North Carolina’s congressional districts. Stay Order, Ex. C to Mem. in Supp. of Prelim. Inj. The congressional districts as drawn by the North Carolina legislature have been upheld, but the Supreme Court of North Carolina will be hearing arguments on the districts on February 2, 2022. *See North Carolina League, of Conservation Voters, Inc. v. Hall*, No. 21 CVS 015426, 2022 WL 124616 (N.C.Super. Jan. 11, 2022).

Rep. Cawthorn intends to run in the midterm elections in an appropriate congressional district for North Carolina, after the congressional map question is resolved (by either continuing his candidacy as filed or re-filing in a different district). Compl. at ¶ 48.

The current election cycle sets the deadline for candidate filing to close on March 4, 2022. The primary election is scheduled to take place in North Carolina on Tuesday, May 17, 2022. Absentee-by-mail ballots must be mailed out no later than 45 days before the election, which is April 2, 2022. Ballots will need to be printed before then, with enough time to be distributed to counties in order to give counties time to prepare any early requests for by-mail ballots.

Without expedited review of this case, the primary (and likely, the general election) will occur without resolution of the constitutional question. Defendants, under the Challenge Statute in question, could prevent Rep. Cawthorn’s name from appearing on the ballot if they determine he is “unqualified” to run for Congress based upon the Challenge to his candidacy. Because of

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the fundamental rights at stake and the urgency of the election cycle, this case must be resolved expeditiously.

Plaintiff proposes the following schedule:

- Defendants shall respond to Plaintiff's Motion for Preliminary Injunction by February 7, 2022;
- Plaintiff shall reply by February 11, 2022; and
- A hearing on Plaintiff's Motion be scheduled as soon as the Court's calendar will allow.

Accordingly, for the following reasons, Plaintiff moves that this Court order that the briefing and decision on the Motion for Preliminary Injunction be expedited to resolve the matter as soon as possible.

Conclusion

For these reasons, Plaintiff respectfully requests this Court order:

- Defendants shall respond to Plaintiff's Motion for Preliminary Injunction by February 7, 2022;
- Plaintiff shall reply by February 11, 2022; and
- A hearing on Plaintiff's Motion be scheduled as soon as the Court's calendar will allow.

Dated: January 31, 2022

Respectfully Submitted,

/s/ Josh Howard

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*Special Appearance Pending

Certificate of Service

I hereby certify that on January 31, 2022, a copy of the foregoing document was served upon the following persons by email and on February 1, 2022 by hand delivery:

Mr. Paul Cax
Associate General Counsel
North Carolina State Board of Elections
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Raleigh, NC 27611

/s/ Josh Howard
Attorney for Plaintiff